



## TOQUERVILLE PLANNING COMMISSION MINUTES

5:30 P.M. Work Meeting & 7:00 P.M. Regular Meeting

Wednesday, September 16, 2015

Held at 212 N. Toquerville Blvd, Toquerville Utah

### 5:30 pm – WORK MEETING:

ATTENDANCE: Planning Commission (PC) Members: Chair Keen Ellsworth, Jerome Gourley, Alex Chamberlain, Mike Ruesch, and Jake Peart; Zoning/Staff Administrator Mike Vercimak, City Recorder Renee Garner, Others: Ash Creek Sewer District representative Blair Gubler, and Jerry Eves.

Chair Ellsworth opened the meeting at 5:39 pm. He stated he wanted to get through the quicker items first so he began with the home occupation reviews.

3. Chair reviewed information on the home occupation/ conditional use permits of September: (1) Vanessa Haines, Blankies LLC, Home Occupation, (2) Vanessa Haines, A to Z Boutique, Home Occupation. All fees are paid and everything is current.

2. Review other assignments given to PC from CC. Chair skimmed over these and said if there was time at the end we would discuss them: (1) Change code regarding secondary structure height in residential zoning. (2) Update a master plan for Anderson Junction to assist in productive growth. (3) Update Night Sky ordinance to insist all new lighting is LED.

2. Review items on the agenda: Item C-1 Grygla's salon has hit a snag because the fire district is requiring upgrades to the lane before district feels comfortable passing off a business permit. Fire district is asking for the road to be widened, a hammer head or cul de sac, and a fire hydrant. Grygla estimated the cost at about \$14,000.00. PC discussed the existing conditions and the commission's options for passage of this home occupation permit application. Keen felt we could approve it subject to compliance to all of the rules and regulations required by law. This would leave them to figure it out with the fire district and the city could give them their permit and license once they've shown compliance. Item C-2 & 3 Jerry Eves and two separate energy company conditional use permits. Alex shared his concerns about light pollutions from the towers. Keen thought that since they didn't come to Staff meeting, PC may have to table those items again.

1. Discussion on short term rentals (VRB) assignment given to Planning Commission from City Council. Chair explained that council wanted (1) PC's input on whether or not we want to see this passed to allow them, and (2) what changes we would recommend to council to make it work. Chair further expanded that council asked us to amend the current draft, vote aye or nay on it. No matter what the vote it would then be sent on to council for their decision. Chair reviewed the recommendations that came forward from last month's discussion:

1. Insist on 100% ownership as resident of Toquerville: Chair said Attorney Heath Snow thought that would be enforceable. Chair said if the people want to see Toquer maintain its small town atmosphere we need to make strong limitations on who can establish these in city limits. He had done a search on VRB regulations and found many cities require this stipulation.
2. Create a special zone; Mike R objected to this stipulation and felt people would be asking for spot zoning to allow them. He cited property rights. Discussion turned to Alex's idea of a cap on number allowed in an area expressed in percentage of households (2 or 3% of total homes), and no more than one in each 1000 foot radius.
3. A review every 6 months was discussed and agreed upon.
4. Notice to neighbors within 300 feet; all felt it a good idea to notify neighbors but questioned if neighbors had any rights to reject it.
5. Make it a license not a conditional use; All agreed.
6. Off street parking would be a must.
7. Application fees: Make the initial fee a steep one; Conditional use permits are \$250.00. That would be a minimum application fee. Chair recommended twice that number. Renee recommended allowing fees for application and penalties to be set by resolution by council, though PC could make a recommendation as to what the fees should be.
8. Penalties for complaints/ violations. Mike R recommended requiring a log. Owner would be required to personally log in the clients with name, number and license plates of vehicles, signature from client that they've read regulations. City can ask for log at any time.
  - a. First complaint would trigger a review/citation from the code enforcement official and a \$1000.00 penalty.
  - b. Second violation/citation would trigger a review from PC and possible revocation of license with a \$5000.00 penalty.
  - c. Third violation/citation would trigger a \$10,000.00 penalty and shut down. After discussion PC chose 12 months for the shutdown. That penalty would follow the property so they can't sell it and have a new owner do it. Reapplication should have a higher application fee.
9. Give neighbors the right to vote yes or no to allow them; Chair again stated he didn't think that was legal.
10. Discussion on nightly rental license or bed tax and if city should set a bed tax specifically for VRBs. Mike R stated we'd need to make the tax applicable to any and all hotel type businesses including bed and breakfasts (BnB). Jerry Eves recommended hitting businesses in the pocket book for violations but not revocation of license, maybe just suspension.
11. VRBs cannot be claimed as a primary residence for the state reduction of tax.

Chair reminded us that Attorney Heath Snow wanted to make sure that they can't have a separate building and rent it out on R-1: Only one building and one rental per property in single family residential.

PC reviewed the current ordinance draft for where to put their corrections.

They corrected the definition to 90 and 91 days instead of 60 and 61 in Title 10 10-29-1D-2 and D-3.

10-29-2 was taken out and 10-29-3 (now 2) amended to say: "The nightly or short term leasing of a residence shall be listed as "Prohibited Use" in the use descriptions of Single-Family Residential District (R-1), Multiple Family District (RM), Agricultural District (A), Multiple Use District (MU-20), and a Planned Development Overlay Zone (PDO) zoning districts."

10-29-3 (was 4) A-1 will be amended to 100%. A-2 also amended to 100% for resident.

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10-29-3 (was 4) A-1 will be amended to 100%. A-2 also amended to 100% for resident.

10-29-3B is amended from "home occupation" to Business license and short term rental business license".

Added under 10-29-3C: "no more than one building per lot may be utilized for a Short-term Rental; and".

10-29-3D will be amended to: "The owner of the Short-term Rental must maintain a log with the following information:

- a. Name and number of occupants
- b. Number of vehicles with license plate numbers
- c. Dates of Occupancy
- d. Verification that Occupants have agreed to comply with all applicable rules and regulations

Added to 10-29-3:

- E. Maximum number of occupants in the Short-term Rental shall be no more than two persons per bedroom with a maximum of 10 occupants per home
- F. Amplified sound that can be heard outside the home shall not be allowed before 9 am or after 8 pm.
- G. The owner must comply with all applicable laws, rules, ordinances and regulations
- H. Applicant must pay for and provide notification to neighbors within a 300 ft radius for a public hearing,
- I. There shall be no less than 1000 feet between each Short-term Rental, and in no case shall the total number of Short-term Rentals in the city of Toquerville exceed 2% of the entire number of homes within the city,
- J. A mandatory review by the Planning Commission of the license granted herein must be had every six months,
- K. The Short-term Rental must provide parking in designated areas only, and no parking may occur on the streets,
- L. Payment of initial application fee of \$1,000 to cover additional oversight.
- M. The following penalties shall apply
  - a. First violation: \$1,000
  - b. Second violation: \$5,000
  - c. Third violation: \$10,000
  - d. Fourth violation: license automatically revoked
- N. Upon the second violation, there shall be a mandatory review required before the Planning Commission, who shall have the ability and right to revoke a business license at that hearing in its sole and absolute discretion,
- O. Revocation of business license, for any reason, shall result in a minimum 12-month waiting period prior to any new application, which revocation shall run with the land. Upon revocation, there is no guarantee of any future license,
- P. The Short-term Rental may not be the owner's primary residence.

Chair dismissed the work meeting at 6:59 pm.

### **7:00 pm – REGULAR MEETING:**

**ADDITIONAL ATTENDANCE:** Debbie Grygla came in at 7:12 pm.

Chair Keen Ellsworth called the meeting to order at 7:00 pm.

1. The pledge was led by Mike Ruesch.
2. Chair asked for any disclosures or declarations of conflict with agenda items. None were mentioned.

**A. REVIEW OF MINUTES:** Minutes of the August 19, 2015, PC meeting were reviewed. Chair called for a motion.

**Motion** by Jerome Gourley to approve the minutes was second by Mike Ruesch. Chair stated minutes were approved unanimously by Alex Chamberlain, Keen Ellsworth, Jerome Gourley, Mike Ruesch and Jake Peart.

**B. PUBLIC FORUM:** Comments & requests for future agenda items. Chair asked for comments. None were given.

### **C. ACTION ITEM:**

1. Review and possible approval of application for Home Occupation of a hair color & design Salon, "Debbie G Studio", Applicant: Debbie Grygla, at 441 S Westfield, Property Tax ID# T-161-D-1-A. No representative was present at this time.

Chair called for a motion.

**Motion** was given by Jerome Gourley to table indefinitely until applicant asks for rehearing and brings in proof of action taken to comply to fire district recommendations the Home Occupation of a hair color & design Salon, "Debbie G Studio", Applicant: Debbie Grygla, at 441 S Westfield, Property Tax ID# T-161-D-1-A. Second was given by Jake Peart. Chair stated the item was tabled unanimously by Chamberlain, Ellsworth, Gourley, Ruesch and Peart.

2. Review and possible recommendation to Council for approval on application for conditional use permit for a wind farm. Applicant: Jerry Eves, et al DBA Southwest Wind Energy LLC. Location of proposed use: north by northeast of Anderson Junction straddling both sides of Interstate 15 past but not including Pintura. Proposed use of property: wind powered electric utility. Mike stated that a representative did come to Staff in August. Jerry stated items C-2 and C-3 are separate items. He said Rocky Mountain Power was given the opportunity first to purchase last year but was not willing to pay a reasonable price. Current plan is to sell it to a different municipality. If they take the offer there will be an 18 month build out period. Lease with SITLA is pending. There will be 30 towers at 80 meters high with 147 feet arms. All will be visible from the freeway. The reason they moved more north with the turbines is because they will work at 35 – 40% generation capacity with greater wind where the gorge is narrower.

Jake asked about long term affects. Jerry stated that there will be a 20 year lease with a 10 year extension whereupon the property will revert back to SITLA. They can then decide to use the towers for generation or take them down. Alex asked about light and noise pollution. Jerry said FAA required beacon flash lighting on anything over 200 feet. He recommended going to the Washington exit to see a communication tower in order to compare lighting. He mentioned that the red ambient is less light polluting than the white. Regarding noise: at 300 meters the sound is comparable to a large refrigerator. It's less noisy than the freeway.

Chair called for a motion.

**Motion** by Jerome Gourley to approve the conditional use permit for recommendation to Council according to the recommendations of Staff for a wind farm, Applicant: Jerry Eves, et al DBA Southwest Wind Energy LLC was second by Mike Ruesch.

Staff recommendations are:

1. A comprehensive site plan be submitted for staff review for any part of the project scheduled for construction. This plan should detail access, utilities, structures and buildings proposed for construction.
2. Need to obtain all local, state and federal permits required.
3. Require a completion and restoration bond in an amount sufficient to cover costs of completion and/or restoration in the event of failure by applicant.
4. Buildings, structures and all appurtenances will require a building permit issued by Toquerville City and may require special inspections, the cost of which is to be borne by the applicant.
5. This permit cannot be enlarged, expanded, or changed otherwise without express written permission from Toquerville City.
6. This permit shall receive an annual review by Toquerville Planning Commission.

Chair called for a vote: Chamberlain, nay, Ellsworth, Gourley, Ruesch and Peart, all ayes. Chair stated the motion to approve the item carried. Jerry asked Alex Chamberlain to look up the Apple Valley ordinance regarding wind farms and light pollution for more information. He said he was conscientious about the need to protect the night sky from too much lighting.

Chair talked to Debbie Grygla at this point and told her that the Salon application had already been tabled before she arrived, but if she would be patient, they would finish up their work with the energy company applications and may be able to reopen her application for review. She thanked him.

3. Review and possible recommendation to Council for approval on application for conditional use permit for renewable energy or natural gas power generation. Applicant: Jerry Eves, et al DBA Strata Blue Energy, LLC. Location of proposed use: Property tax ID#: SITLA #70824, Federal tax ID#: 27-1874929, Parcel-T-3-0-22-322 and T-3-0-22-3211, on Property leased from SITLA and private entities, (west side of I-15-Anderson Junction). Proposed use of property: renewable energy or natural gas power generation.

Jerry stated that all the Power generators would fit on their private property and would not involve the SITLA land as previously planned: Parcel ID numbers #T-3-0-22-322 and T-3-0-22-3211. He said it was an ideal site to put in a natural gas fire generation plant. The high pressure gas line goes right by the property. He's paid the fee to have an interconnect study done and has a buyer pending. He created a map showing the footprint of the generator at about 200 foot square for the physical site with a safety area around it that will be fenced and another fence around the entire property. The generator is on the south end of the property with a green house on the north end to recirculate the hot water so as not to waist the heat. He suggested we look at a site west of Mona Utah run by Pacific Corp for an example of the system.

Keen read the conditions recommended by Staff and asked if this would cause air water and light pollution. Jerry said there would be the equivalent of six diesel trucks idling in a parking lot. There would be no water pollution but some water recapture and the sewer would be used. The noise would be about half the noise of the freeway. There will be three turbines with three stacks at 60 feet high. The only lighting would again be that required by the FAA. Jerry said that natural gas condenses in the cold so steam will be seen in the winter. He added that there would be gear oil used which is considered a hazardous material.

Mike Vercimak stated that this was all new information to him and he would need more detail to make recommendations for the green house. Blair Gubler stated that the sewer district would need to approve any discharge into their system. Jerry said to just forget about the green house for now. Jerry stated that water is used for circulation purposes and would not be contaminated. Chair asked Mike Vercimak if they had enough information for approval. Mike said any concerns can be handled in the building permit application process and as agreements are developed between the business and the city.

Jerry volunteered that he could put up a 10 or 15 foot berm to block the turbines from view. The City might also want to put a "Welcome to Toquerville" sign on the property.

Chair called for a motion.

**Motion** was given by Alex Chamberlain to approve the conditional use for recommendation to Council for approval for renewable energy or natural gas power generation, Applicant: Jerry Eves, et al DBA Strata Blue Energy, LLC, conditioned upon recommendation of staff and adherence to the night sky ordinance. Second was given by Jerome Gourley.

Staff recommendations are:

1. Application should receive a complete review by staff.
2. A comprehensive site plan showing all required utilities, roadways, structures, and appurtenances shall be submitted for review.
3. All local, state and federal licenses and permits need to be acquired.
4. Proper identification and legal standing of all required signatories.
5. This permit cannot be enlarged, expanded, or changed otherwise without express written consent of Toquerville City.
6. This permit shall require a completion bond in sufficient amount to cover costs of completion and restoration in the event of failure of applicant.
7. Buildings, structures and all appurtenances will require a Toquerville building permit and may require special inspections to be paid for by the owner/developer.
8. This permit shall receive an annual review from the Toquerville Planning Commission.

Chair stated the motion to approve carried unanimously by Chamberlain, Ellsworth, Gourley, Ruesch and Peart.

1. Another look at possible approval of application for Home Occupation of a hair color & design Salon, "Debbie G Studio", Applicant: Debbie Grygla, at 441 S Westfield, Property Tax ID# T-161-D-1-A.

Chair asked for a motion to reopen this item to consideration.

**Motion** by Jerome Gourley to reopen item C-1 for consideration of a home occupation permit for a hair salon, applicant: Debbie Grygla was second by Alex Chamberlain. Chair stated motion carried unanimously by Chamberlain, Ellsworth, Gourley, Ruesch and Peart.

Chair explained to applicant that PC had no objections to the salon. He said it was the fire department that has the concerns. He invited Debbie to address PC. She went over the recommendations from the fire department. Keen thought we could approve it pending compliance to fire district recommendations which are: widening of the lane, a hammer head or cul de sac, and a fire hydrant.

Chair called for a motion.

**Motion** was given by Jerome Gourley to approve the application for a home occupation permit subject to recommendations from Staff of a hair color & design Salon, "Debbie G, at 441 S Westfield, Property Tax ID# T-161-D-1-A subject to all applicable authorities. Second was given by Alex Chamberlain.

Staff Recommendations are:

1. The residence should be inspected by the Fire Department for code compliance and shall obtain all local, state and federal licenses required and agrees to abide by all rules and regulations of each such jurisdiction.
2. The permit should not be allowed to be enlarged, expanded or changed otherwise without express written consent of the Toquerville Planning Commission.
3. This permit should receive an annual review by the Planning Commission.

Chair stated the item carried unanimously by Chamberlain, Ellsworth, Gourley, Ruesch and Peart.

Renee was directed to wait until applicant brought in proof that they complied with all jurisdiction requirements and recommendations before issuing the permit and business license.

4. Review and possible recommendation to Council for approval to amend Title 10 by ordinance (2015.XX) to allow under condition certain short term leases or rentals of properties in residential, agricultural and other zones. Chair stated the original ordinance drafted had been turned down by council last May. Council gave PC direction to try again. PC has done as instructed and proposed changes.

Those changes are:

1. Business license and short term business license required, not home occupation or conditional use,
2. The owner of the Short-term Rental must maintain a log with the following information:
  - a. Name and number of occupants
  - b. Number of vehicles with license plate numbers
  - c. Dates of Occupancy
  - d. Verification that Occupants have agreed to comply with all applicable rules and regulations
3. Maximum number of occupants shall be no more than two persons per bedroom with a maximum of 10 occupants per home
4. Amplified sound that can be heard outside the home shall not be allowed before 9 am or after 8 pm.
5. The owner must comply with all applicable laws, rules, ordinances and regulations
6. Applicant must pay for and provide notification to neighbors within a 300 ft radius for a public hearing,
7. There shall be no less than 1000 feet between each Short-term Rental, and in no case shall the total number of Short-term Rentals in the city of Toquerville exceed 2% of the entire number of homes within the city,
8. A mandatory review by the Planning Commission of the license granted herein must be had every six months,
9. The Short-term Rental must provide parking in designated areas only, and no parking may occur on the streets,
10. Payment of initial application fee of \$1,000 to cover additional oversight.
11. The following penalties shall apply
  - a. First violation: \$1,000
  - b. Second violation: \$5,000
  - c. Third violation: \$10,000
  - d. Fourth violation: license automatically revoked
12. Upon the second violation, there shall be a mandatory review required before the Planning Commission, who shall have the ability and right to revoke a business license at that hearing in its sole and absolute discretion,
13. Revocation of business license, for any reason, shall result in a minimum 12-month waiting period prior to any new application, which revocation shall run with the land. Upon revocation, there is no guarantee of any future license,
14. The Short-term Rental may not be the owner's primary residence.

Mike R advised to add:

15. Owner must maintain current contact information with the City of Toquerville, and the Owner must be available 24 hours per day during any tenancy.

Mike V recommended adding to number 6 that 75% of the homeowners within the 300 feet radius must approve the application.

Upon further discussion of Heath Snow's concern that applicant can't have a secondary building rented out in single family residential zoning, Jerome read from the original draft in 10-29-4C that, "The nightly or short term leasing does not occur within the owner's personal residence or within an accessory structure located upon the same lot or parcel as the owner's personal residence, regardless of whether the accessory structure is an attached building or detached". This may cover Heath's concern but PC thought it wise to state it more strongly somewhere.

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Mike V responded to discussion that recent building permit approvals allowed for multiple dwellings on one lot in single family residential. He stated that those properties are not being allowed more than one residence per lot. The building inspector did recently ask PC to address this issue in code and advised that additions must share a common wall instead of being unattached or attached by a breezeway.

Chair reminded PC that regardless of the vote this item will continue onto council for their vote.

Chair called for a motion.

**Motion** by Alex Chamberlain to approve with changes written by Chair for recommendation to Council for approval to amend Title 10 by ordinance (2015.XX) to allow under condition certain short term leases or rentals of properties was second by Mike Ruesch. Chair called for a vote: Chamberlain, Ruesch, and Peart; ayes, Ellsworth, and Gourley; nays. Chair stated the motion carried three to two.

5. Review and possible approval of home occupation & conditional use permit(s) for the month of September, 2015.

Chair called for a motion.

**Motion** was given by Mike Ruesch to approve the annual review of the September HOCUPs with all conditions continued for (1) Vannessa Haines, Blankies LLC, Home Occupation, and (2) Vannessa Haines, A to Z Boutique, Home Occupation. Second was given by Alex Chamberlain. Chair stated the motion to approve the September HOCUPs passed unanimously by Chamberlain, Ellsworth, Gourley, Ruesch and Peart.

Mike R reminded PC of the things that council assigned PC to address: (1) Change code regarding secondary structure height in residential zoning. (2) Update a master plan for Anderson Junction to assist in productive growth. (3) Update Night Sky ordinance to insist all new lighting is LED. PC added to that a building code amendment that additions must share a common wall instead of being unattached or attached by a breezeway. Mike Vercimak volunteered to go through the Land Use section of the code and make those recommendations for amendment to be discussed at the next PC meeting. Chair agreed.

ADJOURNMENT: Meeting was adjourned by Chair Keen Ellsworth at 8:00 pm.

Minutes of the Toquerville Planning Commission meeting of September 16, 2015, will be presented for review and approval in the October meeting.

Approved: \_\_\_\_\_  
Planning Commission Chair Keen Ellsworth

Date: 10/21/15

Attested: \_\_\_\_\_  
Renee S. Garner, City Recorder/ Clerk

